

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,
Plaintiff

V.

JONATHAN WILLIAM WALL,
Defendant

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) Criminal No. SAG-19-CR-0500
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BRIEF IN SUPPORT OF DEFENDANT’S MOTION FOR PRELIMINARY HEARING
REGARDING STATEMENTS OF ALLEGED CO-CONSPIRATORS

NOW COMES the Defendant, Jonathan William Wall, by counsel, and states as follows:

RELEVANT FACTS

The Indictment in this case charges the Defendant and ten other men with conspiracy to distribute marijuana over a period of over three years, “in the District of Maryland and elsewhere.” The Defendant denies the allegations and seeks to be informed of the evidence that the Government intends to introduce at trial regarding alleged co-conspirator statements.

THE COURT SHOULD EXERCISE ITS DISCRETION AND HOLD A JAMES HEARING
TO EVALUATE THE ADMISSIBILITY OF CO-CONSPIRATOR STATEMENTS

“A statement is not hearsay if it is ‘a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy’ and is offered against the party. Fed.R.Evid. 801(d)(2)(E). In order to admit a statement under 801(d)(2)(E), the moving party must show that (i) a conspiracy did, in fact, exist, (ii) the declarant and the defendant were members of the conspiracy, and (iii) the statement was made in the course of, and in furtherance, of the conspiracy.” *United States v. Pratt*, 239 F.3d 640, 643 (4th Cir. 2001) (citations omitted). “A statement by a co-conspirator is made ‘in furtherance’ of a conspiracy if it was intended to

promote the conspiracy's objectives, whether or not it actually has that effect." *United States v. Shores*, 33 F.3d 438, 443 (4th Cir. 1994), *cert. denied*, 514 U.S. 1019, 115 S.Ct. 1365 (1995).

"The existence of the three prongs of admissibility for coconspirator statements (existence of a conspiracy, membership therein of defendant and declarants, and the statements being made in the course of and in furtherance of that conspiracy) must be supported by a preponderance of the evidence." *United States v. Graham*, 711 F.3d 445, 453 (4th Cir. 2013) (citation omitted). Put a different way, the Court "may admit co-conspirator's out of court statements under Rule 801(d)(2)(E) only if the government presents substantial independent non-hearsay evidence of the conspiracy and [the Defendant's] connection to it." *United States v. Jackson*, 757 F.2d 1486, 1490 (4th Cir. 1985) (citation omitted); *United States v. Hamidullin*, 2015 U.S. Dist. LEXIS 91435, at 12 (E.D. Va. July 14, 2015) ("Importantly, the Government 'must demonstrate the existence of the conspiracy by evidence extrinsic to the hearsay statements.'" (citations omitted).

The Court has the discretion to require that the Government submit a proffer at a preliminary hearing of the evidence it intends to introduce at trial regarding co-conspirator statements. *United States v. Nelson*, 530 F.Supp.2d 719, 728 (D. Md. 2008) (citations omitted). The Defendant requests that the Court exercise its discretion and require that the Government submit a proffer of all such evidence.

WHEREFORE, the Defendant respectfully requests:

A. That the Court schedule a preliminary hearing in which it requires the Government to submit a proffer of the evidence it intends to introduce at trial regarding co-conspirator statements.

B. That, even if the Court chooses not to schedule a preliminary hearing as to this issue, that it still require the Government to submit a proffer of the evidence it intends to introduce at trial regarding co-conspirator statements.

Respectfully submitted this 1st day of November, 2020

s/Jason Flores-Williams, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on this date of Nov. 1, 2020, I electronically filed the within document with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

/s/ Jason Flores-Williams

Jason Flores-Williams